

SERVICE DATE – FEBRUARY 12, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35582

RAIL-TERM CORP.—PETITION FOR DECLARATORY ORDER

Decided: February 12, 2014

On November 19, 2013 (November Decision), a majority of the Board denied a petition for declaratory order and found that Rail-Term Corp. (Rail-Term) is a “rail carrier,” as defined in the Interstate Commerce Act at 49 U.S.C. § 10102(5), and, therefore, is subject to the Board’s jurisdiction. Rail-Term’s petition arose from an order of the United States Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued in connection with two decisions of the Railroad Retirement Board (RRB) that ruled on coverage of Rail-Term’s employees under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA).¹ The D.C. Circuit held Rail-Term’s petition for judicial review in abeyance in order to allow this agency to rule on the question of Rail-Term’s “rail carrier” status under the Interstate Commerce Act. In its decision on referral from the D.C. Circuit, the Board majority found Rail-Term to be a rail carrier under 49 U.S.C § 10102(5).²

On December 13, 2013, Rail-Term filed a petition for reconsideration. On December 16, 2013, the Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) filed a petition to intervene and a request for an opportunity for public comment. On December 27, 2013, the National Railroad Construction and Maintenance Association, Inc. (NRC) also filed a petition to intervene and a request for an opportunity for public comment.

In the interest of compiling a more complete record, the Board will grant in part the requests filed by AAR, ASLRRA, and NRC to participate in this proceeding. Specifically, AAR, ASLRRA, and NRC are allowed to participate in this proceeding as *amicus curiae*. In addition, the Board will grant their request to provide an opportunity for other members of the public to file comments as *amicus curiae*. Participants will be allowed to file comments as follows: entities wishing to file written comments in support of the petition for reconsideration are directed to do so by March 10, 2014. Replies in opposition to reconsideration must be filed by

¹ Employer Status Determination–Rail-Term Corp., B.C.D. 10-33 (Apr. 6, 2010) (RRB 10-33), reconsideration denied, B.C.D. 11-14 (Jan. 28, 2011) (RRB 11-14).

² Vice Chairman Begeman dissented with a separate expression.

March 31, 2014. *Amicus curiae* comments must be limited to the scope of the existing proceeding.

Filings may be submitted either via the Board's e-filing format or in traditional paper format. Any person using e-filing should attach a document and should otherwise comply with the instructions at the E-FILING link on the Board's website at <http://www.stb.dot.gov>.

Any person submitting a filing in the traditional paper format should send an original and 10 copies referring to Docket No. FD 35582 to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001

It is ordered:

1. The requests filed by AAR, AASLR, and NRC to participate in this proceeding are granted in part. AAR, AALSR, and NRC are allowed to participate in this proceeding as *amicus curiae*.
2. The requests for an opportunity to provide public comments, as *amicus curiae*, will be granted.
3. Comments in support of reconsideration are due by March 10, 2014. Replies in opposition to reconsideration are due by March 31, 2014.
4. Notice will be published in the Federal Register.
5. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.